

(1977) 02 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 614 of 1975

Kanhaiya Lal and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-02-1977

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 203
Rajasthan Urban Improvement Trust Act, 1959 — Section 90

Citation : (1977) WLN 63

Hon'ble Judges : A.P. Sen, Acting C.J.

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sen, Actg. C.J.

1. This writ petition by one Kanhaiyalal & Kishansingh is directed against an order of the Tehsildar-cum-Encroachment Officer, Urban Improvement Trust, Udaipur dated 30-10-1974 reviewing his earlier order dated 7-8-1974 dropping the proceedings against them.

2. There were six cases started against the petitioners over the construction of their house on plots No. 15 and 16 situate in front of General Hospital, Udaipur. Of these four cases relate to the removal of encroachment u/s 203 of the Rajasthan Municipalities Act, 1959 on the adjoining lands and the other two u/s 90 of the Rajasthan Urban Improvement Act, 1959 for unauthorised construction. By notices dated 10-12-1969 exhibit D/5 and dated 29-12-1969, exhibit D[6, the Urban Improvement Trust Udaipur called upon the petitioners to remove the unauthorised construction u/s 90-A of the U.I.T. Act. In response to these notices, the petitioners addressed a letter dated 30 12 1969 exhibit IJ making an offer for composition. The Chairman of the Urban Improvement Trust, Udaipur, by his order dated 30-12-1969 exhibit D/7 allowed the composition on payment of Rs. 8,000/-, A similar unauthorised construction was compounded on payment of Rs. 1,001/-. The Tehsildar-cum-Encroachment Officer, by his order dated

7-8-1974 held that the matter having been compounded with the Urban Improvement Trust, the proceedings were dropped in all the six cases. Thereupon, respondents No. 4 and 5, who are persons affected, having their residential houses in the vicinity, applied for review of the order. By his impugned order dated 30-10-1974. exhibit/6, the Tehsildar-cum-Encroachment Officer reviewed his earlier order.

3. In support of the petition, learned Counsel for the petitioners has advanced a two-fold submission viz. (1) there is no power of review under the Rajasthan Municipality s Act, 1959 and, therefore, the order of review passed by the Tehsildar-cum-Encroachment Officer is a nullity, & (2) the Tehsildar cum-Encroachment Officer had no jurisdiction to review his earlier order without giving a hearing to the petitioners. Without going into the first question as to the power of review, the writ petition must succeed on the second ground. Even assuming that the powers of composition u/s 90 of the Rajasthan Urban Improvement Act, 1959 or that of removal of encroachment u/s 203 of the Rajasthan Municipalities Act, 1959 are of an administrative nature, he could not have passed the impugned order without affording to the petitioners an opportunity of hearing. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , their Lordships have held that the dividing line between administrative or quasi judicial power is thin. The body entrusted with an administrative power must act in conformity with the rules of natural justice.

4. The question whether or not the Tehsildar-cum-Encroachment Officer could have reviewed his earlier order is left open. So also the question as to whether or not there was composition of the four cases relating to removal of encroachment u/s 203 of the Rajasthan Municipalities Act, 1959 is a matter to be determined by the Tehsildar-cum-Encroachment Officer after hearing the parties. The original of the application for composition dated 30-12-1969 shows an interpolation. That is, however, a matter for the Tehsildar-cum-Encroachment Officer to decide. The writ petition, there "ore, succeeds and is allowed. The order passed by the Tehsildar-cum-Encroachment Officer dated 30-10-1974 is quashed and he is directed to decide the application afresh after hearing the parties. There shall be no order as to costs.